



20

VINCENT D. LAJINESS
DIRECTOR
ENVIRONMENTAL LEGISLATIVE
AND REGULATORY AFFAIRS
ANR PIPELINE COMPANY

August 20, 1997

Department of the Interior
Minerals Management Service
Mail Stop 4700
381 Elden Street
Herndon, Virginia 20170-4817

Attention: Rules Processing Team

Dear Sir or Madam,

RE: COMMENTS ON NOTICE OF PROPOSED RULEMAKING (NOPR) ON OIL SPILL
RESPONSIBILITY FOR OFFSHORE FACILITIES (62 FR 14052)

The Coastal Corporation (Coastal) is a multi-faceted energy company with operations in natural gas transmission and storage, oil and natural gas exploration and production, coal mining, chemicals, independent power production, trucking, and crude oil refining and marketing. It is regarding the impacts from the above-referenced proposed rule on these operations that Coastal offers the following comments.

General Comments

In general, Coastal has a number of concerns with the MMS proposal for implementation of the offshore facility financial responsibility mandates in the Oil Spill Pollution Act of 1990 (OPA). As Coastal's representative at the June 5, 1997 MMS workshop, it was indeed a pleasure to be able to express these concerns either publicly or in one-on-one conversations with MMS staff. As requested by staff, these comments are again presented. As you will see from the comments which follow, Coastal continues to believe that:

- Condensates should be deleted from the definition of oil, as should all evaporative liquids which are not recoverable under typical oil spill recovery techniques.
- Captive insurers should be able to be used to demonstrate financial responsibility.
- Insurance coverage should not be limited to four layers.

The Coastal Corporation

500 RENAISSANCE CENTER • DETROIT MI 48243-1902 • 313/496-2447 • 313/496-7171 (FAX)

- The provision offering unlimited time for claim submittal after termination or expiration of insurance policies, should be deleted.
- Rights and defenses used by the insured should be offered to the insurers or few insurance companies will allow themselves to be used as evidence of financial responsibility.
- Additional time should be given for complying to the financial responsibility requirements.

Specific Comments

1) Condensates should not be included in the definition of "Oil"

In Section 253.3, MMS defines the word "Oil" to include the words: "Condensate is oil, including condensate that has been separated from gas before pipeline injection." At the workshop, I questioned the inclusion of "condensates" in this definition, upon which MMS staff in the afternoon session expressed their concern that some condensates were as heavy as "oil" and should be included. However, MMS was open to excluding those condensates that were non-recoverable. Further, I was advised that the use of exclusionary language contained in other rules would be helpful in defining the term, such as the "Non-persistent or Group I oil" definition contained in the Coast Guard Vessel Response Plan rules (33 CFR Part 155) at Section 155.1020.

Coastal is now also aware of the letters between Senator John Warner and MMS's Cynthia Quarterman. In brief, in the July 14, 1997 response to Senator Warner's request for exclusion of "condensates" from the definition of "oil," Ms. Quarterman responded that while sympathetic to the reasons for exclusion, there was OPA language that includes in the definition of oil "oil of any kind or in any form, including but not limited to, petroleum..." Ms. Quarterman goes on to note - "Condensate consists primarily of pentanes and heavier petroleum liquid and is covered by the Act." Further, it is noted that with the variety of conditions to consider, mechanical or chemical response to "some" condensate spills may be appropriate.

Essentially, both at the workshop and in Ms. Quarterman's response to Senator Warner there is common ground in that "some" condensates may need to be regulated as recoverable liquids but "some" may be viewed as non-recoverable liquids. These would be non-recoverable liquids because of their evaporative or dispersive nature within the reasonable time frame for deployment and implementation of typical oil spill recovery techniques. It is in the interest of reasonableness, therefore, to distinguish between the two terms so that the goal of the MMS to assure that recoverable liquids are included, while that of the regulated community to assure that those liquids which evaporate and/or disperse before recovery is practicable are not included in the applicability requirements of this rulemaking.

The definition of non-recoverable liquids should then be defined such that it would be less inclusive than the definition of non-persistent oils in the Coast Guard rules, since this definition may be inclusive of oils that could be defined as recoverable liquids.

Therefore, Coastal recommends the following:

- Deletion of the last sentence in the definition of “oil” regarding “condensates.” “Condensates” is undefined and, as such, would be misinterpreted as to MMS’ purpose for its inclusion, namely inclusion of recoverable liquids.
- Inclusion at the end of the definition of oil, the following sentence:

“Non-recoverable liquids, as defined herein, are not included in the definition of oil.”
- Inclusion of the following definition of “Non-recoverable liquids” in the definition section of this rulemaking:

“Non-recoverable liquids means hydrocarbon liquids which have a Reid Vapor Pressure above 4.5 pounds per square inch absolute (31 kilopascals) and a flashpoint of less than 100 degrees F. (38 degrees C.).”

(Note: This definition is taken from Section 2.4 of the API Recommended Practices 2003, Fifth Edition, December 1991, as used to define “Low to High-Vapor-Pressure Products.”)

In addition, in order for consistency in all MMS rulemakings, Coastal recommends that MMS consider revising the definition of “oil” found in Section 254.6 of the rules on “Response Plans for Facilities Located Seaward of the Coast Line” to agree with the revised definition of “oil” and “Non-recoverable liquids,” noted above.

2) Captive Insurers should be Used

Section 253.29(a)(1)-(3) only allows use of insurers listed under this section and who meet the criteria set forth in this section. Coastal urges MMS to allow the use of captives, such as COIL. COIL is not rated by Best, S&P or any other rating system. While not rated, we believe that captive insurers should be able to be used unless there is clear evidence that such companies are not able to cover the insured amount. Since the insured remains liable for cleaning up the spill, if the insurance company is inadequately covered, the insured would seek appropriate damages and claims in the courts. The MMS should not limit the insurers, especially if the company has adequate assets to cover the amount in the event of a spill.

Coastal recommends that the cited subsections be deleted from the proposed rules.

3) Insurance layers should not be limited to four.

Section 253.29(c)(2) requires that the coverage limits must be met within the first four insurance layers. As discussed during the workshop, there is no good rationale for limiting the layers to four. MMS staff asked for alternatives. Coastal appreciated the alternatives offered at the workshop, especially the alternative of having an accountant verify that sufficient coverage is available irrespective of the number of layers used.

Coastal recommends deletion of this subsection from the proposed rules and language added that allows for verification of adequate coverage.

4) The time for claims after termination or expiration of policies should be limited.

Section 253.41(b) states that if the policy expires or is terminated, the insurer still would be required to respond to all claims submitted, regardless of when the claim was reported, as long as the claim occurred during the policy period. This means that all policies must be written on an occurrence basis as opposed to a claims-made basis. Unfortunately, due to market conditions, most liability policies are written on a claims-made basis meaning that you must report the claim within the policy period and once the policy expires, your coverage ceases. Coastal believes placing this restriction in the proposed rule would virtually rule out the use of insurance as evidence of OSFR.

Coastal recommends deletion of this subsection.

5) Rights and Defenses of Insurance Companies should not be taken away

Section 253.41(f) says basically that the insured can use its rights and defenses to argue that the spill was not their responsibility. However, it does not give the same rights and defenses to the guarantor. So, if the insurance company denied coverage because, for example, the claim was not reported in a timely fashion, MMS would not allow for this denial and coverage would be required. This is exactly why, in Coastal's experience, current insurance policies exclude their use as a guarantor under OPA. Insurance companies refuse to give up their defense rights, which is required under OPA, and they will not allow themselves to be used as evidence of OSFR under the MMS for the same reason if this section remains. While MMS staff have indicated that some companies have told the agency that they will provide the coverage under the proposed rule, the cost of such coverage with the limitations placed in the proposal would, we believe, be very expensive and unreasonable.

Coastal recommends excluding this subsection.

6) Additional time should be given for complying to the OSFR requirements

Section 253.44 (as amended at 62 FR 15639) requires that the designated applicant submit to MMS evidence of OSFR no later than 60 days after publication date of the final rule. As noted at the workshop, this time limit is far too confining, since large numbers of companies will likely be seeking insurance coverage with limited insurers available and/or identification of the designated applicant will still be underway when the demonstration deadline passes. More time needs to be given.

Coastal recommends that the demonstration be required at the time of renewal of the facility response plan. This will give all involved sufficient time to determine who will be the designated applicant and time for the designated applicant to arrange coverage.

Page 5
Comments/Oil Spill Responsibility
Offshore Facilities

Coastal appreciates this opportunity to comment on this most important rulemaking. With the inclusion of these comments, we believe the proposed rule will be far more efficiently implemented and center on those discharges that truly will cause environmental damage than is presently contained in the proposed rulemaking.

Sincerely,

A handwritten signature in black ink, appearing to read "Vincent A. Scipione". The signature is fluid and cursive, with the first name "Vincent" being more legible than the last name "Scipione".